

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MIYANO MACHINERY USA INC., Case No. 1:08-cv-00526

Plaintiff,

Chicago, Illinois

February 7, 2008

v.

Motion Hearing

MIYANOHI TEC MACHINERY, INC.,  
et al.,

Defendants.

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Cook Alex McFarron Manzo Cummings  
Mehler, Ltd.

By: Edward D. Manzo,  
Jason R. Smalley,  
Joel H. Bock, and  
Louis J. Alex

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APPEARANCES (Cont'd.):

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- and -

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Proceedings recorded by mechanical stenography; transcript produced by notereading.

09:37:07 1 (Commenced at 9:37 a.m.)

09:37:07 2 THE CLERK: 08-526, Mi yano versus Mi yanoHi tec.

09:37:23 3 MR. MANZO: Good morni ng, Judge Kendal l. My name i s

09:37:25 4 Edward Manzo, M-a-n-z-o, for the pl ai nti ff.

09:37:28 5 THE COURT: Good morni ng.

09:37:29 6 MR. MANZO: I bel i eve thi s i s my fi rst appearance

09:37:30 7 before your Honor.

09:37:31 8 THE COURT: Wel l , good morni ng, Mr. Manzo. Ni ce to

09:37:32 9 meet you.

09:37:33 10 MR. MANZO: The pleasure i s mi ne, your Honor.

09:37:34 11 I have my col leagues wi th me who have appeared i n

09:37:39 12 thi s case.

09:37:39 13 MR. BOCK: Joel Bock.

09:37:40 14 THE COURT: Good morni ng, Mr. Bock.

09:37:41 15 MR. BOCK: Good morni ng.

09:37:42 16 MR. ALEX: Loui s Al ex.

09:37:43 17 THE COURT: Good morni ng, Mr. Al ex.

09:37:45 18 MR. SMALLEY: Jason Smal l ey.

09:37:46 19 THE COURT: Good morni ng, Mr. Smal l ey.

09:37:48 20 MR. KARTON: Good morni ng, your Honor. My name i s

09:37:50 21 Robert M. Karton, K-a-r-t-o-n. I fi led my appearance for al l

09:37:54 22 the defendants.

09:37:55 23 THE COURT: For al l three?

09:37:56 24 MR. KARTON: For al l three defendants.

09:37:57 25 THE COURT: What was your fi rst name?

09: 37: 58 1 MR. KARTON: Robert.

09: 37: 59 2 THE COURT: Robert. Good morni ng.

09: 38: 00 3 MR. KARTON: Good morni ng.

09: 38: 02 4 MR. FRANCI SSEN: Your Honor, I apol ogi ze. I haven' t  
09: 38: 04 5 fi led an appearance yet, but I wi ll be. And my name i s Vernon  
09: 38: 08 6 Franci ssen, V-e-r-n-o-n, last name F-r-a-n-c-i -s-s-e-n.

09: 38: 14 7 THE COURT: Okay. Good morni ng, gentl emen.

09: 38: 17 8 Wel l , I have a Lanham Act i nfri ngement case, an  
09: 38: 20 9 Ill i noi s Uni form Decepti ve Trade Practi ces case, and a  
09: 38: 24 10 prel i mi nary i nj uncti on fi led.

09: 38: 27 11 So l et me ask pl ai nti ffs, fi rst, where we stand on  
09: 38: 31 12 everythi ng that has come i nto my offi ce.

09: 38: 34 13 MR. MANZO: Wel l , there are two moti ons pendi ng thi s  
09: 38: 36 14 morni ng. One i s permi ssi on to fi le an enlarged bri ef; the  
09: 38: 39 15 other i s the prel i mi nary i nj uncti on moti on.

09: 38: 41 16 The compl ai nt has been served. We have not yet  
09: 38: 45 17 recei ved an answer. The i ni ti al status report, I bel i eve, i s  
09: 38: 48 18 schedul ed for l ate March, but I thi nk we mi ght consi der movi ng  
09: 38: 52 19 i t up.

09: 38: 52 20 THE COURT: Ri ght. That' s a standard order that I  
09: 38: 54 21 send out on any newl y fi led case. But, of course, i n a  
09: 38: 57 22 si tuati on where someone' s movi ng for prel i mi nary i nj uncti on  
09: 39: 00 23 al l egi ng acti ons that need to be -- al l egi dly need to be  
09: 39: 05 24 prevented i mmedi ately, that' s -- a di fferent schedul e wi ll be  
09: 39: 07 25 entered. So i f you want to fi ll me i n i n more detail ?

09:39:12 1 Of course, I've read your complaint. In a nutshell,  
09:39:14 2 though, I always like to hear from the plaintiff's attorneys  
09:39:16 3 regarding what they believe their case will show.

09:39:18 4 MR. MANZO: Certainly, your Honor.

09:39:20 5 This case goes back originally in Japan when a  
09:39:24 6 business was started under the name Miyano. It is a family  
09:39:28 7 surname. And eventually the founder died, and I believe the  
09:39:34 8 son or grandson -- I'm not sure which -- who is one of the  
09:39:38 9 defendants named Tom Miyano -- took over running the company  
09:39:41 10 in Japan, and in 1975 opened up the U.S. subsidiary here in a  
09:39:50 11 suburb of Chicago called Miyano Machinery USA.

09:39:53 12 He was the president and chairman of that company and  
09:39:57 13 held various titles, and he was also in control of the  
09:40:00 14 Japanese company.

09:40:04 15 At some point the company became overextended -- oh,  
09:40:08 16 during this time, he signed trademark applications for the  
09:40:13 17 registration of the trademark Miyano and various variations of  
09:40:18 18 that. For example, a stylized version of the name Miyano, and  
09:40:23 19 what we called winged M trademark, which is the M -- or the  
09:40:27 20 flying M with wings going off in opposite directions in a  
09:40:30 21 triangle.

09:40:34 22 Eventually, the company became overextended and  
09:40:37 23 applied for relief to a Japanese agency, which did grant  
09:40:41 24 relief. But as a condition of the relief it required Tom  
09:40:45 25 Miyano to depart from the company, to surrender his shares,

09: 40: 49 1 et cetera. He had to leave the Japanese company, and he had  
09: 40: 52 2 to leave the U.S. company as well.

09: 40: 56 3 Before he did that, he filed some trademark  
09: 40: 58 4 applications in his own name in Japan, and he told the U.S.  
09: 41: 02 5 subsidiary to start abandoning trademarks and not pay  
09: 41: 06 6 maintenance fees on patents, but we did not abandon those  
09: 41: 11 7 trademarks.

09: 41: 12 8 And before he actually left, I believe -- and I'm not  
09: 41: 17 9 sure of the exact date when he did this -- but his son named  
09: 41: 22 10 Steven Miyano, the other individual defendant, who probably  
09: 41: 26 11 was living at the same residence address in Barrington with  
09: 41: 29 12 the father, created or bought a company that was named Hi tec  
09: 41: 37 13 Machinery.

09: 41: 37 14 Either before or just after Tom Miyano left the  
09: 41: 43 15 plaintiff, the name of the defendant corporation was changed  
09: 41: 46 16 from Hi tec Machinery to MiyanoHi tec Machinery.

09: 41: 51 17 Now --

09: 41: 53 18 THE COURT: And when was that?

09: 41: 54 19 MR. MANZO: That was December 2005, as I recollect,  
09: 41: 54 20 your Honor.

09: 41: 58 21 THE COURT: Okay.

09: 41: 58 22 MR. MANZO: Now, they have not yet produced a  
09: 42: 01 23 product, to the best of my knowledge. They are preparing  
09: 42: 04 24 products, I believe, in India. They have a website. My  
09: 42: 09 25 client is known as Miyano throughout the world. The company

09: 42: 15 1 name i s Mi yano Machi nery.

09: 42: 16 2 The defendants deci ded they shoul d use the name  
09: 42: 19 3 Mi yano Machi nery, but we' ll put the name Hi tec i n between  
09: 42: 22 4 those two words. Then they adopted the winged M mark that' s  
09: 42: 26 5 part of -- or a prominent part of our regi stered mark.

09: 42: 29 6 They have a websi te where they have the winged M, the  
09: 42: 32 7 flyi ng M, all over thei r websi te. They are adverti si ng. And  
09: 42: 36 8 now what we' ve l earned i s that they are going to the very  
09: 42: 40 9 i mportant trade show that occurs every two years, the IMTS  
09: 42: 43 10 show that' s comi ng up thi s September. My cli ent goes to all  
09: 42: 47 11 the trade shows. We' re there as Mi yano.

09: 42: 50 12 He i s going there as Mi yanoHi tec. He' s produci ng the  
09: 42: 54 13 same goods, seeki ng the same customers, same channel s of  
09: 42: 59 14 trade, the same bui ldi ng, the same floor, and the same name.  
09: 43: 03 15 I don' t know how much more of an i roncl ad case we coul d have.

09: 43: 06 16 THE COURT: Okay. Somethi ng tel l s me that you mi ght  
09: 43: 09 17 have a defense? Unl ess you' re going to say, We' re going to  
09: 43: 12 18 have a settl ement conference today.

09: 43: 14 19 MR. KARTON: We al ready had the settl ement  
09: 43: 16 20 conference.

09: 43: 16 21 THE COURT: Oh, you al ready di d. Good for you.

09: 43: 16 22 MR. KARTON: And we' re sti ll here.

09: 43: 18 23 THE COURT: Okay. Tel l me, Mr. Karton, what i s the  
09: 43: 21 24 defense?

09: 43: 22 25 MR. KARTON: Wel l , fi rst of al l , i n order, cutti ng to

09: 43: 31 1 the chase, as far as the ownership of the marks is concerned,  
09: 43: 34 2 the flying M mark was owned by an individual in Japan not by  
09: 43: 42 3 the corporation. And the individual -- the mark is now owned  
09: 43: 48 4 by Tom Miyano individually in Japan. It was never owned by  
09: 43: 54 5 the corporation. All of the expenses for the maintenance of  
09: 44: 01 6 the mark were personally paid not corporately paid.

09: 44: 05 7 As far as the marks -- there were some other marks  
09: 44: 11 8 that the corporation used in Japan. But in the '80s, the  
09: 44: 17 9 directors of the corporation took action deliberately to cease  
09: 44: 22 10 using some of the marks, and they were allowed to continue to  
09: 44: 27 11 use the flying M mark, not as an ownership, but allowed it to  
09: 44: 33 12 do because in the '80s the company was still owned by Miyano.

09: 44: 39 13 I don't want to confuse the surname Miyano with the  
09: 44: 42 14 corporate name Miyano, so let's call the corporation MMJ,  
09: 44: 46 15 Miyano Machinery Japan.

09: 44: 47 16 THE COURT: Okay. So when you said that it was still  
09: 44: 48 17 owned by, you meant the person.

09: 44: 50 18 MR. KARTON: That's correct; that's correct.

09: 44: 50 19 THE COURT: Understood. For some reason that's what  
09: 44: 52 20 I thought.

09: 44: 55 21 MR. KARTON: The -- as far as the American company,  
09: 44: 59 22 Miyano Machinery USA, let's call that MMJ.

09: 45: 03 23 THE COURT: Okay.

09: 45: 04 24 MR. KARTON: As far as MMJ is concerned, since MMJ  
09: 45: 06 25 was a wholly-owned subsidiary, MMJ gave directions to MMJ to



09: 45: 12 1 devel op a new mark, whi ch they di d. And they devel oped a  
09: 45: 18 2 styl ized Mi yano, the word Mi yano, i n scri pt rather than block  
09: 45: 24 3 l etters.

09: 45: 26 4 THE COURT: Is that the one that's on page 2 of your  
09: 45: 31 5 prel i mi nary i nj uncti on moti on? Thi s one (i ndi cati ng)?

09: 45: 36 6 MR. KARTON: Yes.

09: 45: 37 7 THE COURT: Okay.

09: 45: 37 8 MR. KARTON: And Mi yano, both Mi yano Japan, MMU, and  
09: 45: 44 9 MMU began to use that styl ized name, the desi gn. The tri angl e  
09: 45: 56 10 that you saw pi ctures of, the tri angl e wi th the wi nged M --

09: 46: 00 11 THE COURT: Page 3 of the prel i mi nary i nj uncti on,  
09: 46: 02 12 thi s one?

09: 46: 02 13 MR. KARTON: Ri ght.

09: 46: 04 14 They say i t was adopted i n '05 i n the Uni ted States,  
09: 46: 13 15 that was after Tom Mi yano l eft the company. I t had been not  
09: 46: 19 16 used pri or to that time. As I sai d, Tom Mi yano owns that mark  
09: 46: 25 17 i n Japan. I t was never used commerci al ly pri or to that time.

09: 46: 33 18 We feel that Mi yano, MMU, i s attempti ng to usurp a  
09: 46: 41 19 mark that i s owned person al ly by Tom Mi yano, or, i n the  
09: 46: 49 20 al ternative, i s attempti ng to establi sh a ri ght to use a mark  
09: 46: 55 21 that i t had years before abandoned.

09: 47: 02 22 There i s the addi ti onal factor that, whi le  
09: 47: 05 23 Mi yanoHi tec Machi nery i s certai nly a corporati on, on the  
09: 47: 11 24 websi te now and i n the adverti sing now, they are di spl ayi ng  
09: 47: 18 25 the trade name Tom and Steven Mi yano, not affi li ated i n any

09: 47: 24 1 way wi th Mi yano Machi nery, Inc. i n the Uni ted States or Mi yano  
09: 47: 29 2 Machi nery i n Japan. They are usi ng thei r personal surname to  
09: 47: 34 3 do busi ness.

09: 47: 35 4 THE COURT: But is i t cal led Mi yanoHi tec Machi nery?

09: 47: 38 5 MR. KARTON: The company is cal led Mi yanoHi tec  
09: 47: 42 6 Machi nery. But the advertisi ng for i t and the advertisi ng at  
09: 47: 46 7 the trade show on thei r booth wi ll be Tom and Steven Mi yano --

09: 47: 51 8 THE COURT: Okay.

09: 47: 51 9 MR. KARTON: -- two di fferent -- and there wi ll be  
09: 47: 53 10 the di scl ai mer to di fferenti ate i t from MMU. That's -- that's  
09: 48: 03 11 basi cal ly the di fference here.

09: 48: 05 12 THE COURT: Okay.

09: 48: 07 13 MR. KARTON: As far as the moti ons are concerned,  
09: 48: 09 14 there are two, as Mr. Manzo menti oned, the one for leave to  
09: 48: 15 15 amend. We, of course, have no obj ecti on to that. And had I  
09: 48: 21 16 known beforehand, I woul d have told hi m that we have no  
09: 48: 23 17 obj ecti on to that.

09: 48: 24 18 THE COURT: Okay.

09: 48: 25 19 MR. KARTON: We woul d, of course, l ike an opportuni ty  
09: 48: 27 20 to respond to the amended moti on. The -- because there is  
09: 48: 37 21 i nformati on that is goi ng to be comi ng from Japan, i t's  
09: 48: 41 22 necessary from Japan, and because we don't control the  
09: 48: 45 23 corporati on MMJ, and we somehow don't thi nk that they are  
09: 48: 51 24 goi ng to be as cooperati ve as they mi ght be, gi ven that  
09: 48: 55 25 they're the opponents i n a lawsui t, and because of the

09:49:00 1 language differential, it may take us a little more time to  
09:49:03 2 gather up the data we need to present to your Honor, even in  
09:49:07 3 affidavit form, especially since you're going to need  
09:49:11 4 certified translations. So --

09:49:13 5 THE COURT: I don't speak Japanese.

09:49:15 6 MR. KARTON: I don't either. I have trouble with  
09:49:18 7 English.

09:49:20 8 In any case, normally I wouldn't ask for five weeks,  
09:49:23 9 but I am this time --

09:49:24 10 THE COURT: Okay.

09:49:26 11 MR. KARTON: -- to respond.

09:49:27 12 THE COURT: All right. A short reply?

09:49:30 13 MR. MANZO: Yes, your Honor. The winged M trademark  
09:49:34 14 is registered -- it's a federally registered mark --

09:49:36 15 THE COURT: The triangular one?

09:49:38 16 MR. MANZO: The triangle with the M in -- it is  
09:49:41 17 actually registered to Miyano USA back in 1982.

09:49:45 18 THE COURT: Okay.

09:49:46 19 MR. MANZO: His marks were used continuously. There  
09:49:49 20 was never an intent to abandon them.

09:49:51 21 The use of a trade name and a disclaimer is just not  
09:49:56 22 going to do the trick, your Honor. The disclaimer honestly is  
09:49:58 23 in microprint. And when people search for Miyano, they're  
09:50:01 24 going to find their company, and we're the ones who  
09:50:03 25 established the reputation.

09: 50: 05 1 THE COURT: Okay.

09: 50: 05 2 MR. MANZO: There was a disclaimer case and that was  
09: 50: 07 3 involving the Berghoff restaurant down there.

09: 50: 10 4 THE COURT: Right.

09: 50: 11 5 MR. MANZO: But that involved a family member who  
09: 50: 14 6 went out 40 miles west to open up a French bistro.

09: 50: 19 7 THE COURT: I remember reading about it in the paper,  
09: 50: 21 8 but I don't recall reading the case, so I don't know the law  
09: 50: 24 9 that came out of it.

09: 50: 25 10 MR. MANZO: In that case they allowed a disclaimer to  
09: 50: 29 11 be in equal size. But, again, that was not geographically the  
09: 50: 33 12 same area and not seeking the same customers. The present  
09: 50: 38 13 case is same goods, same customers, same channels of trade,  
09: 50: 42 14 same name, dead ringer.

09: 50: 44 15 THE COURT: Okay. You sought to file an excess paged  
09: 50: 47 16 brief as well. How many pages, sir, did you want?

09: 50: 50 17 MR. MANZO: It was attached. I believe it's  
09: 50: 52 18 approximately 30.

09: 50: 53 19 THE COURT: Okay. All right. Here's what I'll do.  
09: 50: 56 20 I'll grant the motion to amend. I'll grant the motion to file  
09: 50: 58 21 the excess brief.

09: 50: 59 22 You, sir, also can file up to the same number of  
09: 51: 02 23 pages in response as he has filed, and I will give you five  
09: 51: 05 24 weeks to respond to the preliminary injunction. Fortunately  
09: 51: 08 25 you brought the case with enough time that we can get to the

09:51:12 1 issues, so that we can hopefully resolve this long before your  
09:51:15 2 trade show, which is usually the problem is that we're right  
09:51:19 3 on the verge and then we need to move faster.

09:51:22 4 My question is whether or not we need to have some  
09:51:25 5 expedited discovery on the issues. Are we satisfied that we  
09:51:29 6 can get what we need in order to resolve the case?

09:51:33 7 MR. KARTON: Given the conversations that we've had  
09:51:36 8 up to now, I anticipate that at least counsel will cooperate  
09:51:42 9 with one another --

09:51:43 10 THE COURT: Okay.

09:51:43 11 MR. KARTON: -- towards discovery.

09:51:45 12 MR. MANZO: We're still --

09:51:46 13 MR. KARTON: Whether we can get the clients to do it  
09:51:49 14 or not --

09:51:49 15 THE COURT: Right.

09:51:50 16 MR. KARTON: -- is something else, but at least  
09:51:51 17 counsel will be able to talk to each other.

09:51:53 18 MR. MANZO: Mr. Karton and I have a good working  
09:51:55 19 relationship, your Honor. It would be helpful if we could set  
09:51:57 20 a date certain for answering the complaint.

09:51:59 21 THE COURT: We will do so.

09:52:00 22 But let me get back to the schedule on the  
09:52:02 23 preliminary injunction. So you're going to have five weeks to  
09:52:04 24 respond.

09:52:06 25 MR. KARTON: Yes.

09: 52: 06 1 THE COURT: You will have two weeks to reply, and  
09: 52: 09 2 that'll give us the fully briefed preliminary injunction  
09: 52: 12 3 motion.

09: 52: 12 4 You need to respond to the amended complaint  
09: 52: 18 5 within 21 days of today, which I think should give you enough  
09: 52: 22 6 time -- what's the problem?

09: 52: 23 7 MR. MANZO: There is no motion to amend, your Honor.  
09: 52: 26 8 I'm sorry.

09: 52: 26 9 THE COURT: Oh, was it an amended preliminary  
09: 52: 28 10 injunction motion.

09: 52: 28 11 MR. MANZO: No, there's no amendment.

09: 52: 30 12 MR. KARTON: It's just the notice.

09: 52: 31 13 MR. MANZO: There was an amended notice of motion  
09: 52: 33 14 because it was set for yesterday and it moved to today.

09: 52: 36 15 THE COURT: Oh, I misunderstood what you were saying  
09: 52: 39 16 with the nonobjection.

09: 52: 40 17 MR. KARTON: I apologize. I was not clear. I'm not  
09: 52: 41 18 objecting to our being here today rather than yesterday.

09: 52: 44 19 THE COURT: Okay. 21 --

09: 52: 45 20 MR. KARTON: I apologize for the confusion.

09: 52: 47 21 THE COURT: 21 days to answer the complaint, and five  
09: 52: 52 22 weeks to answer the preliminary injunction.

09: 52: 55 23 Then -- what does that bring me to, Mr. Wood?

09: 52: 58 24 THE CLERK: Response to preliminary injunction  
09: 52: 59 25 motions due March 12, reply thereto is due March 27.

09: 53: 04 1 THE COURT: March 22nd?

09: 53: 06 2 THE CLERK: 27th.

09: 53: 07 3 THE COURT: 27. Okay.

09: 53: 08 4 MR. KARTON: The answer is due March 22nd?

09: 53: 10 5 THE CLERK: Answer to the complaint is due

09: 53: 12 6 February 28th, in 21 days.

09: 53: 16 7 MR. KARTON: And -- I'm sorry. What did you set

09: 53: 19 8 for --

09: 53: 19 9 THE CLERK: 21 days from now, which is February 28.

09: 53: 22 10 MR. KARTON: And then what's on March 22nd?

09: 53: 24 11 THE CLERK: The reply to the responsive -- to the

09: 53: 28 12 response to the motion for preliminary injunction.

09: 53: 30 13 MR. KARTON: Okay. One question that I do have, your

09: 53: 34 14 Honor, and that is -- and I didn't ask counsel this before --

09: 53: 40 15 the plaintiff in this case is MMJ. But it's -- we know that

09: 53: 45 16 it's a wholly-owned subsidiary of MMJ, the Japanese company.

09: 53: 51 17 And we would like to know whether or not counsel will produce

09: 53: 57 18 documents that we request of MMJ rather than our having to try

09: 54: 02 19 to serve MMJ in Japan and so forth.

09: 54: 06 20 THE COURT: Okay. Are you going to have that

09: 54: 08 21 ability?

09: 54: 09 22 MR. MANZO: I have to speak with the client, and they

09: 54: 12 23 will have to ask their Japanese parent about that --

09: 54: 15 24 THE COURT: Okay.

09: 54: 15 25 MR. MANZO: -- because they are honestly outside the

09: 54: 17 1 juri sdi cti on of the Court --

09: 54: 18 2 THE COURT: Ri ght.

09: 54: 19 3 MR. MANZO: -- and they' re not a party.

09: 54: 20 4 MR. KARTON: Wel l --

09: 54: 21 5 THE COURT: So what I thi nk you need to do i s talk  
09: 54: 23 6 wi th each other and make a determi nati on. If there' s going to  
09: 54: 26 7 be an i ssue regarding those di scovery requests, you' ll need to  
09: 54: 28 8 come back to me and I wi ll address i t, but --

09: 54: 31 9 MR. KARTON: Especi al l y si nce ownershi p of some of  
09: 54: 33 10 these thi ngs i n Japan i s an i ssue. I mean, i t' s been raised  
09: 54: 39 11 i n the compl ai nt. And so i f we' re taki ng about ownershi p of  
09: 54: 43 12 these thi ngs by the Japanese parent of the Ameri can company,  
09: 54: 47 13 but yet we can' t get documents from the Japanese parent --

09: 54: 51 14 THE COURT: Ri ght.

09: 54: 53 15 MR. KARTON: -- we' re stymied or at least --

09: 54: 56 16 THE COURT: Wel l , there' s the Hague Conventi on that  
09: 54: 58 17 wi ll enable you to get i t --

09: 54: 59 18 MR. KARTON: Ri ght.

09: 54: 59 19 THE COURT: -- but I et' s fi rst make the di sussi ons  
09: 55: 03 20 between l awyers to make a determi nati on as to what your  
09: 55: 07 21 company' s posi ti on i s.

09: 55: 08 22 MR. KARTON: I' m sure we' ll tal k l ater today.

09: 55: 10 23 MR. MANZO: We certai nl y wi ll agree, your Honor. And  
09: 55: 13 24 we' re not going to do anything to sti fle thi s case, because we  
09: 55: 16 25 need rel i ef qui ckl y.



09: 55: 17 1 Our posi ti on woul d be, though, the U.S. company, MMU,  
09: 55: 19 2 is the regi stered owner.

09: 55: 20 3 THE COURT: Okay.

09: 55: 21 4 MR. MANZO: And who owns the mark in Japan is  
09: 55: 23 5 i nteresting hi story, but we own the rights in the Uni ted  
09: 55: 27 6 States.

09: 55: 27 7 Mr. Mi yano, the i ndi vi dual defendant, is no l onger  
09: 55: 31 8 part of our company, and he shoul dn' t be permi tted to compete  
09: 55: 34 9 wi th us under --

09: 55: 35 10 THE COURT: Okay. It's not before me today, and  
09: 55: 36 11 peopl e are sti ll wai ting in the wi ngs for thi s 9:00 o' clock  
09: 55: 40 12 cal l --

09: 55: 40 13 MR. KARTON: Okay.

09: 55: 40 14 THE COURT: -- so i f you do have an i ssue regardi ng  
09: 55: 42 15 i t, then you can come back to me wi th --

09: 55: 44 16 MR. KARTON: I woul d al so poi nt out there are  
09: 55: 48 17 obj ecti ons and cancel l ati on proceedi ngs in the Patent and  
09: 55: 50 18 Trademark Offi ce for these purposed ownershi ps.

09: 55: 53 19 THE COURT: Okay.

09: 55: 53 20 MR. KARTON: Thank you very much, your Honor.

09: 55: 55 21 THE COURT: One more. I wi ll gi ve you a prel i mi nary  
09: 56: 00 22 i nj uncti on date that we wi ll work towards, and that wi ll be on  
09: 56: 03 23 May 9th at 10:00 a.m. i n the morni ng.

09: 56: 06 24 MR. MANZO: Thank you, your Honor.

09: 56: 07 25 THE COURT: Okay. Thank you.

09:56:08 1 MR. MANZO: Would your Honor want to advance the date  
09:56:11 2 for the initial status report?

09:56:13 3 THE COURT: Oh, since you're all started here with  
09:56:15 4 the -- I think I can just strike the initial status for all of  
09:56:21 5 you, since this sufficed to serve me for that purpose.

09:56:25 6 I would like to get the five-page report for purposes  
09:56:28 7 of my files, which includes settlement discussions, what the  
09:56:33 8 key issues are. And you don't need to appear again on it, but  
09:56:37 9 you do need to file it. And if you can file that within seven  
09:56:40 10 days of today, I'd appreciate it.

09:56:43 11 MR. MANZO: So your Honor is striking the actual --

09:56:44 12 THE COURT: Striking the actual status, but I'm  
09:56:46 13 requiring you to file the report --

09:56:48 14 MR. MANZO: Very good.

09:56:48 15 THE COURT: -- so you need to sit down and just  
09:56:50 16 answer those questions that I require of all cases. Okay?  
09:56:53 17 Thank you very much.

09:56:54 18 MR. KARTON: And report in five days. Thank you for  
09:56:56 19 your time, your Honor.

09:56:57 20 THE COURT: Thank you.

21 (Concluded at 9:56 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

\_\_\_\_\_  
April M. Metzler, RPR, CRR

\_\_\_\_\_  
Date

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